

*United States Court of Appeals*  
*for the*  
*District of Columbia Circuit*



**TRANSCRIPT OF  
RECORD**



**TRANSCRIPT OF RECORD.**

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**Court of Appeals, District of Columbia**

**APRIL TERM, 1900.**

**No. 993.**

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**18**

**EDWARD J. RIORDAN, APPELLANT,**

***vs.***

**JOHN P. STOUT.**

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**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

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**FILED MAY 21, 1900.**

# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia.

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EDWARD J. RIORDAN, Appellant, }  
vs. } No. 993.  
JOHN P. STOUT. }

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a Supreme Court of the District of Columbia.

EDWARD J. RIORDAN }  
vs. } No. 20202. Equity.  
JOHN P. STOUT. }

UNITED STATES OF AMERICA, } ss:  
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Feb. 25, 1899.

In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN }  
vs. } In Equity. No. 20202, Doc. 46.  
JOHN P. STOUT. }

The complainant respectfully represents:

First. That he is a citizen of the United States, resident of the District of Columbia, and brings this suit in his own right with respect to the matters and things hereinafter set forth and contained.

Second. That the defendant is a citizen of the United States, resident of the District of Columbia, and is sued in his own right with respect to the matters and things hereinafter set forth and contained.

Third. That some time prior to 1892 the defendant discovered and originated a scheme and plan of furnishing the trades people of the United States a convenient and cheap method of soliciting trade by mail and the public a convenient and inexpensive method of placing orders through the United States mail and postal service of the United States, and in said year 1892, and before said discovery, scheme, or plan of the said defendant was patented or any

company or association organized in connection therewith or for the purpose of its advancement or utilization, the defendant approached the complainant, who at that time was an acquaintance of the defendant and had known him, the defendant, for a period of two years, at his then place of employment in

2 the city of Washington, District of Columbia, and told him,

the complainant, that he, the defendant, had bought a lot of ground from a company known as the Northwestern Investment Company, in the city of Superior, State of Wisconsin, and had taken up by payment ten of the \$5 notes given by him, the defendant, for and on account of the purchase of said lot, and that there were then due by the defendant on account of the purchase of said lot ten other \$5 notes given by the said defendant on the account aforesaid, and the defendant then and there proposed to the complainant that if he, the complainant, would pay him, the defendant, \$45 cash for the notes given by the defendant for and on account of the purchase of said lot, and which had already been paid by him, the defendant, and assume and pay the remaining ten \$5 notes given by the defendant on account of said purchase as the same became due and payable, that he, the defendant, in consideration of the said complainant so paying him, the defendant, the said \$45 cash for the said notes so paid and taken up by the defendant and the complainant assuming and paying the said remaining ten \$5 notes, that he, the defendant, would give the complainant one thousand shares of stock when a patent was granted and issued for said discovery, plan, and scheme in a company organized in connection therewith or for the purpose of its advancement or utilization and stock issued by the said company and give the complainant a position in said company; that the proposition of the defendant was agreed to and accepted by the complainant, and in compliance with the terms of the same and the contract so made the complainant paid the defendant \$45 cash for the said notes aforesaid and assumed and paid

3 the remaining ten \$5 notes aforesaid as the same became due and payable.

Fourth. The complainant further says that at the time of the making of the said proposition by the defendant and its acceptance by the complainant and the making of the said contract between the parties hereto it was uncertain whether the discovery, plan, or scheme of the defendant would ever be a success or that the complainant would ever reap any benefit therefrom by reason of his investment and of the promise and agreement of the defendant to deliver to him, the complainant, one thousand shares of stock in the company to be organized in connection with the said discovery, plan, and scheme, or for the purpose of its advancement or utilization, and when stock should be issued by the said company; that at the time of the said proposition, its acceptance, and contract no patent had been granted or issued for the said discovery, plan, or scheme, and the complainant at the time aforesaid understood from the defendant that the money so obtained from him, the complainant, as hereinbefore set forth by the defendant, was intended to pay

the cost and expenses incident to and connected with the procuring of a patent for the said claimed discovery, invention, plan, or scheme; and the complainant says that the said contract was made by him with the defendant in the hope and with the expectation that should the said claimed invention, discovery, plan, or scheme become a patentable one and profits or money realized therefrom, or the stock issued by the company to be organized, as aforesaid, should become marketable and salable, then the complainant would secure some return from the investment so made by him and the contract aforesaid.

4 Fifth. The complainant further says that after the making of the contract aforesaid and, to wit, in the month of May, 1892, the complainant left the District of Columbia and resided therefrom continuously until the month of May, 1893, when he returned to this city and District and has ever since resided here.

Sixth. The complainant further says that after the making of said proposition, its acceptance as aforesaid, and the entering into of said contract a United States patent was granted and issued for the said invention, discovery, plan, and scheme of the defendant, and a company thereupon organized for its advancement and promotion, and stock duly issued, and the complainant says on information and belief that the defendant is still the owner and possessor of a considerable number of shares of the said stock, to an amount more than sufficient to enable him to specifically comply with the contract hereinbefore set forth, the failure of the defendant so to comply being hereinafter more specifically referred to.

Seventh. That on, to wit, the 17th day of March, 1896, the defendant, in part performance of the said proposition and the terms of the said contract on his part to be kept and performed, mailed to the complainant—and the same was received by him—a certificate for one hundred shares of stock in "The United States Economic Postage Association," the company organized for the advancement and promotion of the said patent and invention of the defendant aforesaid, and of which company the defendant is secretary.

8 Eighth. The complainant further says that although the complainant has performed his part of the contract aforesaid and done everything that was required of him thereunder to entitle him, the complainant, to a specific performance by the defendant of the latter's part of the said contract and to entitle the complainant to the relief hereinafter prayed for, the defendant, although requested so to do, has utterly and wholly neglected, refused, and declined to carry out and comply with his part of the said contract, as he was in duty bound to do, and deliver to the complainant the remaining nine hundred shares of stock issued by the said company so organized as aforesaid, to wit, by the United States Economic Postage Association.

Ninth. The complainant further says that should the court be of opinion that there is anything further or necessary for the complainant to do in the premises to fully carry out and complete his part of the said contract he hereby offers so to do and tenders

himself as ready and willing to comply and meet all demands that may be required of him by the court in connection with his, the complainant's, obligations under said contract.

Tenth. The complainant further says that, as he is informed and believes, with the exception of the shares of stock that the defendant has in the said company or association organized as aforesaid, the defendant has no property, real or personal, or any assets of any description, and has no property of any kind which could respond to or meet a judgment for damages should the complainant seek a remedy at law for breach of the said contract, and the complainant's remedy therefor by a proceeding at law would not be effectual or

complete or adequate, and a judgment for damages, if pro-  
6 cured in such proceeding, would not be an accurate satisfac-  
tion of the claim for breach of said contract, and said pro-  
ceeding would be less beneficial than relief sought by this proceed-  
ing and would be attended otherwise with doubt and uncertainty.

The complainant further says that the ends of justice would be best subserved by granting to the complainant the relief herein sought and prayed for.

Eleventh. The complainant further says that, as he is informed and believes, the defendant is now and has been for some time past constantly disposing of the shares of stock owned by him in said company or association, and that before an action at law, if such remedy could be availed of for relief under the circumstances of this case, could be brought to trial and a result reached in the present condition of the calendar and dockets of the law courts, the defendant would have disposed of all the stock and interest so by him held in the said company or association, and the complainant's remedy would be thus inadequate, ineffectual, and not compensatory for the damages by him sustained, and the ends of justice would not thereby be subserved and the complainant lose a substantial benefit by resorting to such a proceeding at law.

Twelfth. The complainant further says, as he is informed and believes, that the value of the shares in said company or association fluctuates, though they are now worth and of the value, to wit, four dollars a share, and the complainant could only be fully compensated and lose no substantial benefit from the breach by the defendant of the contract aforesaid by a specific performance  
7 thereof by the defendant.

Thirteenth. That the complainant further says that, as he is informed and believes, the defendant now has in his possession or subject to his individual control or direction more than a sufficient number of shares in the said company or association to comply with his, the defendant's, part of said contract to deliver to the complainant nine hundred shares of stock in said company or association; but, as heretofore alleged in this bill of complaint, the defendant is disposing of his shares of stock in said company or association, and the only way that the complainant can be amply and adequately protected, in the event that the court should decree a specific performance of the said contract aforesaid, is by enjoining

the defendant, until the final hearing of this cause, from selling or otherwise disposing of a sufficient number of shares to meet said complainant's demand.

The premises considered, the complainant therefore prays:

1. That process may issue herein directed to the defendant, John P. Stout, commanding him to appear and answer, by a day therein named, the exigency of this bill of complaint.
2. That the court will declare that the complainant is entitled to a specific performance and execution of the said contract and agreement, and will decree the same accordingly.
3. That the defendant may be enjoined and restrained until the final hearing of this case from selling, assigning, transferring or otherwise disposing of shares of stock in the said company or association, or his interest therein, so that he will be unable to comply with the decree of this court, should there be a specific performance ordered of the said contract and agreement.
4. That the court may decree that the said defendant holds the said nine hundred shares of stock in said company or association as trustee for the complainant.
5. That the complainant may have such other and further relief in the premises as the nature of the case may require and to the court may seem just and proper.

The defendant to this bill of complaint is John P. Stout.

EDWARD J. RIORDAN.

PADGETT AND FORREST,  
*Sol'r's for Complainant.*

Edward J. Riordan, being first duly sworn according to law, deposes and says that he has read over the above bill of complaint by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true and the facts therein stated on information and belief he believes to be true.

EDWARD J. RIORDAN.

Subscribed and sworn to before me this 25th day of February, 1899.

J. R. YOUNG, *Clerk,*  
By M. A. CLANCY, *Ass't Clerk.*

9

*Decree pro Confesso.*

Filed May 3, 1899.

In the Supreme Court of the District of Columbia.

EDWARD G. RIORDAN }  
vs. } In Equity. No. 20202.  
JOHN P. STOUT. }

It appearing to the court that the defendant herein was personally served with process on the 6th day of March, 1899, and caused

his appearance to be entered herein on March 28th, 1899, but has not pleaded, answered, or demurred to said bill of complaint or taken any further steps herein since his said appearance, it is this 3rd day of May, 1899, by the court ordered and decreed that the said bill of complaint and the matters and things therein alleged be, and the same are hereby, taken as confessed by the said John P. Stout; and it is further ordered that this cause be, and the same hereby is, referred to John E. McNally, an examiner of this court, to take testimony herein.

CHAS. C. COLE,  
*Associate Justice.*

10

*Motion to Set Aside the Decree pro Confesso.*

Filed May 16, 1899.

In the Supreme Court of the District of Columbia.

EDWARD T. RIORDAN }  
vs. { No. 20202.  
JOHN P. STOUT.

Now comes the defendant, by his solicitor, Charles H. Turner, and moves the court to set aside the decree *pro confesso* taken herein on the 3rd day of May, A. D. 1899, for that the defendant was sick and unable to attend to business matters and for a considerable time in the Providence hospital, as will more fully appear upon reference to affidavit hereto annexed.

CHAS. H. TURNER,  
*Solicitor for Defendant.*

To Mr. Edwin Forrest, solicitor for complainant:

Please take notice that I shall call the above motion to the attention of Mr. Justice Cole, presiding in equity court No. 2, on Friday, May 19th, 1899, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

CHAS. H. TURNER,  
*Solicitor for Defendant.*

11

*Affidavit of J. P. Stout.*

Filed May 16, 1899.

DISTRICT OF COLUMBIA, ss:

Personally appeared John P. Stout, who, after being duly sworn according to law, deposes and says on oath that he is the party named as defendant in the above-entitled cause; that during the latter portion of April and the early days of the present month, by reason of illness, he was unable to attend to business of any kind; that for a considerable time he was confined to the Providence hos-

pital, in this city, under treatment, and that on the 15th day of May he learned for the first time of the decree in this cause.

JOHN P. STOUT.

Subscribed and sworn to before me this 16th day of May, A. D. 1899.

SAM'L C. MILLS,

*Notary Public, D. C.*

[SEAL.]

12 *Two Depositions on Behalf of Complainant.*

Filed May 18, 1899.

In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN }  
vs. } In Equity. No. 20202.  
JOHN P. STOUT. }

WASHINGTON, D. C., *May 9th, 1899—3 o'clock p. m.*

Met, pursuant to notice, at the office of the solicitor for the complainant.

Present: Mr. Forrest, of counsel for the complainant, and the examiner. No one appeared for the defendant.

Whereupon EDWARD J. RIORDAN, the complainant and a witness in his own behalf, being first duly sworn according to law, was examined, and testified as follows:

Direct examination.

By Mr. FORREST:

I am the complainant in this cause and I know the defendant and have known him about nine years. I have lived here continuously for the past five years and was born in this city and District, and for said period of five years I have been engaged in business here; that when I first became acquainted with the defendant he was in the insurance business, and after leaving that the only business or occupation he has followed, so far as I know, has been his connections with the United States Economic Postage Association, of which association the defendant has been for some time secretary; that

some time prior to 1892 the said defendant, John P. Stout,  
13 discovered and originated a scheme or plan of furnishing the trades people of the United States a convenient and cheap method of soliciting trade by mail, and the public a convenient and inexpensive method of placing orders through the United States mails and postal service of the United States, and in said year 1892, and before said discovery, scheme, or plan of the said John P. Stout, the defendant, was patented or any company or association organized in connection therewith for the purpose of its advancement or utilization, the said defendant approached me at my then place of employment with the Pabst Brewing Company at No. 703 North

Capital street, in the city of Washington, District of Columbia, and told me that he had purchased a lot of ground from a company known as the North Western Investment Company in the city of Superior, State of Wisconsin, and had taken up by payments ten of the \$5 notes given by the said Stout on account of the purchase of said lot, and that there remained due by him on account of said purchase ten other \$5 notes given by him on the account aforesaid, and the said Stout then and there proposed to me that if I would pay him \$45 cash for the notes given by him on account of said purchase, and which had been paid by said Stout, and I assume and pay the remaining ten \$5 notes so given by Stout on account of said purchase as the same became due and payable, that he, said Stout, in consideration of my paying him the said \$45 cash for the notes so paid and taken up by the defendant, and I assuming and paying the remaining ten \$5 notes, that he would give me one thousand shares of stock when a patent was granted and issued for said discovery, plan, and scheme in a company organized in connection therewith or for the purpose of its advancement or utilization and stock issued by the said company, and give me a position in said company; that the proposition of the said Stout was agreed to and accepted by me, and in compliance with the terms and provisions of the same — the contract so made I paid the said Stout \$45 cash for the said notes aforesaid, and assumed and paid the remaining ten \$5 notes as the same became due and payable. I file herewith the said notes now in my custody and possession and ask that they may be appropriately marked. (The notes referred to are here marked by the examiner as Complainant's Exhibits Nos. 1 to 17, inclusive, and are returned with the deposition.) Two of said notes are missing, one of them having been lost or mislaid by the defendant and one by myself.

I further say that at the time that the said Stout made said proposition to me and my acceptance of the same and the making of the contract with him, it was uncertain whether the said discovery or scheme of the said stock would ever be a success or that I would ever reap any benefit therefrom by reason of my investment and of the promise and agreement of the said Stout to deliver to me the said 1,000 shares of stock in the company to be organized in connection with the said discovery or plan or scheme or for the purpose of its advancement or utilization and when stock should be issued to the company.

I further say that at the time of the said proposition, its acceptance, and the contract, as aforesaid, no patent had been granted or issued for the said discovery, plan, or scheme, and I at that time understood from the said Stout that the money so obtained from me as aforesaid by the said Stout was intended to pay the costs and expenses incident to the procurement of a patent for the said discovery and invention, and I made the said contract with the said Stout in the expectation that should the said invention, discovery, or scheme become a patentable one and profits or money realized therefrom or the stock issued by the company to be organized

should become marketable and salable, that I would secure some return from the investment so made by me and the contract aforesaid.

I further say that after the making of the contract and from May, 1893, to May, 1894, I was away from the District of Columbia.

I further say that after the making of said proposition, its acceptance, and the entering into the contract, as hereinbefore set forth, a United States patent was granted and issued for the said invention, discovery, and scheme of the said defendant and a company thereupon organized for its advancement and promotion and stock duly issued, and thereafter and prior to the 17th day of March, 1896, I demanded of the said Stout, the defendant, that he should perform the contract so entered into between us, and the said Stout, in part performance of the said contract, on said day mailed to me a certificate for 100 shares of stock in "The United States Economic Postage Association," a company organized for the advancement and promotion of the said patent and invention of the said defendant, and of which company the said Stout was then secretary, and although I have since demanded of the said Stout that he perform the said contract so entered into, he has failed and refused to do so, and has never delivered to me any of the said stock or a certificate of any of the said stock, except the said certificate for 100 shares thereof.

16 I further say that I have performed my part of the contract, and have done everything that was required of me thereunder to entitle me to the remaining 900 shares of stock in the said company, as agreed by the said Stout that he should deliver to me.

I further say that I am willing to do whatever else may be necessary or requisite, if any things, under the terms of the contract which I made with the said Stout, if the court should be of the opinion that anything further was required of me.

I further say, as I am informed and believe, that the said Stout is still the owner and possessor of a considerable number of shares of stock in the said association or company, to an amount more than sufficient to carry out his said contract with me.

I further say, as I am informed and believe, that the said Stout, with the exception of his interest in the said association and his ownership of stock therein, is not the owner of any property of any kind, real or personal, and has no property which could respond to a judgment for damages should I attempt or have attempted to seek by suit at law for damages for breach of the contract here made with me.

I further say that all I desire is the defendant carry out his contract and deliver to me the remaining 900 shares of stock in the said association.

I further say that I have been reliably informed and believe that the said defendant has been disposing of his stock and interests in the said company, and that I believe that the stock is worth about \$4 a share.

17 I file herewith a copy of the certificate of 100 shares that was delivered to me by the defendant in part performance of the said contract. (The copy referred to was marked by the examiner as Complainant's Exhibit No. 18.)

EDWARD J. RIORDAN.

Subscribed and sworn to before me this 9th day of May, 1899.  
JNO. E. McNALLY, *Examiner.*

The further taking of testimony was here adjourned until Monday, May 15th, 1899, at 1 o'clock p. m.

— — —,  
*Examiner in Chancery.*

MONDAY, *May 15th, 1899*—1 o'clock p. m.

Met pursuant to adjournment.

Present: Mr. Forrest, solicitor for the complainant; the examiner. No one appeared for the defendant.

Whereupon THOMAS L. WADE, a witness produced on behalf of the complainant, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. FORREST:

I am a citizen of the United States and a resident of the District of Columbia, having resided here all my life. I know the parties to this cause. I have known the complainant for upwards of twelve

18 years and I have known the defendant for equally as long a period; that in the spring of 1892 I was employed as book-

keeper in the office of the Pabst Brewing Company, in this city, where the complainant was also employed, and at that time the defendant came into the office and asked me to let him have one hundred dollars, saying that he would make it all right with me by the issue of stock in the Economic Postal Association, and for the one hundred dollars he would give me 1,000 shares of stock in the said company when organized. I told him that I had not a hundred dollars, and there the conversation with me ended. At the time that I had the talk with the defendant the complainant was standing close by, and after I told the defendant that I did not have the \$100 the said defendant withdrew from me and had the conversation with the complainant, and the complainant and defendant came to an understanding and agreement, by which the defendant was to give the complainant 1,000 shares of stock when the stock was ready to be issued in the said association for the \$100, and the complainant, as I understand, gave the defendant the \$100; that as to the business about the lot, I know that the complainant bought the lot and paid the notes that were due, and I know that he did pay them of my own knowledge on two or three occasions. I think that there were 20 five-dollar notes; that at the time the complain-

ant asked me to witness the agreement between the complainant and defendant, and both the complainant and defendant stated the substance of the agreement and understanding between them, and the terms of such understanding and agreement were substantially as set forth in the testimony of the complainant herein which I have read.

19 I further say that at the time of the said conversation and agreement there was no stock company in existence, but defendant was to deliver the stock after the company was organized. There was no company organized at that time and the stock was worth very little, and 1,000 shares of stock could be bought, to be delivered on its issue, for \$100, the amount that he offered to deliver for \$100 to the complainant and myself, and as I understood from the defendant at the time, he was very anxious to obtain the money at that time to further the interests of the said scheme or plan of the defendant.

T. L. WADE.

Subscribed and sworn to before me this 15th day of May, 1899.

JNO. E. McNALLY, *Examiner.*

The solicitor for complainant here announced his testimony as closed.

I, John E. McNally, an examiner in chancery, do hereby certify that the aforesaid depositions embraced in pages from 1 to 7, in typewriting, were duly taken down in typewriting in my presence from the statements of the respective witnesses, and after being so taken down in typewriting were by said witnesses read over and by them subscribed to in my presence and in the presence of solicitor for complainant, said witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

20 I further certify that I am not of counsel for either of the parties to said cause, and that my fee as examiner is \$10.

JNO. E. McNALLY,  
*Examiner in Chancery.*

#### EXHIBIT E. J. R. No. 18.

Number 682. Capital stock, \$5,000,000. Shares, 100.

UNITED STATES ECONOMIC POSTAGE ASSOCIATION, WASHINGTON,  
D. C.

Par value, \$10 each. Series —.

#### *Certificate of Membership.*

This certifies that Edward J. Riordan, of Washington, D. C., has paid the membership fee of one dollar per share on subscription for one hundred shares of stock of the United States Economic Postage Association and will be entitled to a certificate of full-paid non-

assessable stock on payment of one dollar per share additional as required by terms and conditions of subscription.

In witness whereof the association has caused its seal to be annexed and this certificate to be signed by its president and secretary, at Washington, D. C., this 14th day of M'ch, A. D. 1896.

[Seal of the United States Economic Postage Association, 1893.]

J. F. SAUM, *President.*

JOHN P. STOUT, *Secretary.*

21 Incorporated under the laws of the State of West Virginia.

(Endorsed.)

For value received, — hereby sell, assign, and transfer to — —, of —, all my right, title, and interest in and to the shares of stock within mentioned, and authorize the secretary to make the necessary transfer on the books of the association.

Witness my hand this — day of —, 189—.

In presence of—

— —.

*Cross-examination of the Complainant.*

Filed Nov. 2, 1899.

WASHINGTON, D. C., June 19th, 1899—2 o'clock p. m.

Met pursuant to notice.

Present: Mr. Forrest, of counsel for the complainant; Mr. Turner, of counsel for the defendant; the examiner—

And EDWARD J. RIORDAN, the complainant, and a witness in his own behalf, who, being produced for cross-examination, testified as follows:

Cross-examination.

By Mr. TURNER :

Q. You are quite certain that you paid Stout \$45 in money?

22 A. I paid him \$5 less than the amount that the shares he took for at the time. I am not positive as to the number of shares or notes, but I paid him \$5 less than the number of notes I received from him.

Q. And the reduction was not greater than \$5? A. No, sir.

Q. When did this transaction take place? A. In 1892. I am not positive as to the month, but it was around in June or July, 1892.

Q. Mr. Stout said he would give you a thousand shares of stock in addition to giving you whatever title he had to land referred to in these proceedings? A. Yes, sir; he did.

Q. What was to be the value per share of this stock? A. At that

time there was no company organized and there was no value placed upon the shares of the stock.

Q. Did he tell you what their par value would be? A. No, sir; I do not believe he knew himself at the time. It was only a scheme then, and not patented at all.

Q. Had a patent been applied for? A. No patent had been applied for, to my knowledge.

Q. These various statements of yours in your direct examination relative to what the defendant wanted with the money or concerning the issue of the patent is merely your understanding derived from your conversation with Mr. Stout? A. I am positive of that. I understand it perfectly well. I got it from Mr. Stout at that time.

Q. Did Mr. Stout tell you how many shares in this company he would have when the company was formed? A. I do not 23 remember his stating anything as to the number of shares, but said that if the scheme was successful I was to receive one thousand shares of stock and a position.

Q. Was it not \$1,000 worth of stock? A. No, sir; the only dollars mentioned at that time was the number I was to give him.

Q. It does not appear that your shares of stock was to be one per cent. or one hundred per cent. of the shares of stock of the proposed company. What proportion of the shares of the company did you think you were buying? A. At that time there was no company; therefor I could not tell what shares I was buying. I had to remain satisfied with the agreement that I made with him for 1,000 shares of stock in the proposed company and the land before mentioned. I could have bought the whole thing for \$100 cash at that time.

Q. When did you next see Mr. Stout? A. The exact date I cannot say, but I saw him at least 50 times within the next year.

Q. Were you out of the city during the latter part of 1892 or 1893? A. During 1893, about ten months.

Q. On your return do you remember seeing Mr. Stout and complaining that the lot- you had purchased were of no value? A. Yes, sir; on two or three different occasions.

Q. Was it not then that he suggested giving you stock? A. No, sir.

Q. Did you ever ask Mr. Stout for the one thousand shares of stock? A. Yes, sir; but as a rule he was in such a condition 24 that he did not know what I was asking him; the condition that I always found him in was that he had been drinking.

Q. When, if you recall, did you ask him for the one thousand shares of stock? A. The exact time I cannot give. I reminded him of it during 1894, 1895, and 1896..

Q. Where would you meet him? A. I met him at Ninth and F, in this city.

Q. On all these occasions was it Ninth and F? A. No, sir; at different places; and I met him at the office in the building where he has his office, and also in different parts of the city.

Q. Did he admit at the time that you asked him that he owed you the one thousand shares? A. Once he stated there was \$1,000 *dollars* worth of stock. He claimed that that was the bargain instead of one thousand shares.

Q. How at other times? A. The other times I could not get very much satisfaction.

Q. He never admitted he owed the 1,000 shares, did he? A. No, sir; he stated that he claimed that there was \$1,000 worth of stock, and I claimed that there was one thousand shares of stock according to our agreement.

Q. You received 100 shares in March, 1896? A. Yes, sir; sent me by mail.

Q. Without any request at that time from you? A. No, sir; after a request from me.

Q. After the receipt of this 100 shares did you make any further effort to obtain the 900 which is the subject-matter in this 25 suit? A. Yes, sir; on several different occasions I went to the office of Mr. Stout, but could not find him in.

Q. You never saw him after the receipt of the 100 shares? A. Yes, sir; eight or ten different times in different parts of the city, and also in my place of business.

Q. At any of these meetings did you ask him for the 900 shares of stock? A. Yes, sir; whenever I thought he was in a condition to speak business to him, which was very seldom.

Q. What reply did he make? A. As I have stated before, he always maintained that the agreement called for \$1,000 worth of stock, and that the 100 shares that he had given me at their face value of \$10 a share satisfied the obligation, which I objected to then and since, because my brother had obtained 50 shares of full-paid stock, for which he paid \$1 per share.

Redirect examination.

By Mr. FORREST:

Q. As I understand you, your agreement with him was to give you 1,000 shares of stock paid up and the payment by you of the deferred notes on the property in controversy, and the repayment to him of the amount he had already paid on the notes that were taken up by him on said property? A. Less the reduction of \$5 which he allowed at the time,

Q. During the course of your negotiations with him, the defendant, as you have heretofore testified, was there not at any 26 time referred to or considered by you as a part of the agreement a thousand dollars worth of stock in the company to be organized for the purposes stated in your direct examination? A. Not to my knowledge and belief was there anything mentioned about dollars, but it was a thousand shares.

Q. When, if you recollect, was it that the defendant ever stated that the contract was for \$1,000 in the stock of the company and not a thousand shares? A. The first time I called on him in re-

gards to it I claimed 1,000 shares, and he stated that the agreement was \$1,000 worth of stock and which he stated was paid up by the 100 shares he had sent me a few days previous.

Q. Do you remember about when it was that he made the claim referred to in your last answer? A. About a week after I received the 100 shares he claimed that the 100 shares settled the agreement between us.

Q. Prior to that time had he in any conversations with you made any such claims? A. I do not remember of his making any such claims.

Q. At the time that this matter was talked over between you was any one present or within hearing? A. Mr. T. L. Wade was present.

The further taking of testimony was here adjourned until to-morrow at 12 m.

TUESDAY, June 20th, 1899—12 o'clock.

Met pursuant to notice.

27 Present: Mr. Padgett, of counsel for the complainant; Mr. Turner, of counsel for the defendant; the examiner—

And THOMAS L. WADE, a witness produced on behalf of the complainant, who, being produced for cross-examination, testified as follows:

Cross-examination.

By Mr. TURNER:

Q. What time in the year of 1892 was it that you had the conversation referred to with Mr. Stout? A. To the best of my recollection, it was in the early spring.

Q. Mr. Stout wanted to borrow a hundred dollars? A. Mr. Stout came to me and asked if I had a hundred dollars, which he was very anxious to get at that time.

Q. He made no mention of the Superior City land? A. To me, I do not think he did.

Q. Can you fix more definitely the time? A. No, sir.

Q. What did he say the par value of these shares were? A. As far as I understood, at that time there was no value to them at all. There was no company organized, no definite plan of action, at that time.

Q. What proportion of the whole stock of the proposed stock of the company was this 1,000 shares to be? A. I do not know; the whole matter was indefinite.

Q. Was the total capitalization of this company discussed? A. Mr. Stout, prospectively talking, I might say, simply went on to state his belief in it being a big thing. I don't think at that 28 time he had any plans of capitalization or issuance of stock.

Q. Then this 1,000 shares might have been the entire stock of the proposed company, so far as you know? A. Oh, no; of course,

in discussing this stock with Mr. Stout on many, many occasions, the understanding was that all who invested in it would be paid big money.

Q. How can you say that a thousand shares would not represent the entire capital stock? A. Natural enough, he would not give me the whole of the stock and turn the whole business over.

Q. Did he not say a thousand dollars' worth of stock? A. At that time Mr. Stout did not speak of dollars at all to me; his offerings were altogether in stock, to the best of my knowledge and recollection at this remote time.

Q. You declined to let him have a hundred dollars? A. I told Mr. Stout that I did not have a hundred dollars at the time, which was the fact. I would have loaned it to him if I had had it at the time.

Q. Did you hear the conversation between Mr. Riordan and Mr. Stout? A. Only incoherently.

Q. Then you have no very exact knowledge of their agreement? A. Yes, sir; I do. After Mr. Riordan and Mr. Stout were through their conversation and fixed up their agreement, I was standing about eight feet away from Mr. Riordan; they approached me and called me to witness the agreement between them, which was done, and one of them recited what that agreement was.

29 Q. Was it the same proposition that Stout had made to you? A. It was not altogether so; no.

Q. What about the Superior City land in this agreement? A. That, to the best of my recollection, did not figure in the talk with me.

Q. No reference was made to the Superior City land transaction that you remember? A. No, sir; not to me. I understood at that time that that was a further inducement to Mr. Riordan to let Mr. Stout have the money, as a sort of additional security.

Q. How much money did Mr. Riordan give Mr. Stout? A. Of my own knowledge I do not know.

Q. Then, in witnessing this agreement your attention was not called to the amount of money, which was the very subject-matter of the agreement? A. I forget which one—either Mr. Stout or Mr. Riordan recited to me that in consideration of one hundred dollars to be given by Mr. Riordan to Mr. Stout, Mr. Stout would give him a thousand shares of stock in a company which was to be formed as all such things are promoted, and the lot business was only lightly gone over before me. The main point that I was to bear testimony to and witness was this fact of the stock issue, it being emphasized by both of them.

Q. You do not know how much money Mr. Riordan gave Mr. Stout? A. Not of my own knowledge.

Q. Did the money pass in your presence? A. No.

30 Q. Was this conversation with Mr. Riordan the same day that Mr. Stout had tried to get the money from you? A. Yes, sir.

Q. And within a short time of the conversation with yourself?  
 A. I should judge within about fifteen minutes.

EDWARD J. RIORDAN.

Sworn to before me this 19th day of June, 1899.

JNO. E. McNALLY,  
*Examiner in Chancery.*

I, John E. McNally, an examiner in chancery, do hereby certify that the foregoing cross-examinations of the witness Edward J. Riordan was duly taken down in typewriting, in my presence, from the statements of the witness, and after being so taken down in typewriting was by said witness read over, said witness having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause. I further certify that I am not of counsel for either of the parties to said cause, and that my fee as examiner is \$5.

JNO. E. McNALLY,  
*Examiner in Chancery.*

31

*Affidavit of Edwin Forrest.*

Filed May 19, 1899.

In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN }  
 vs. } In Equity. No. 20202.  
 JOHN P. STOUT. }

DISTRICT OF COLUMBIA, ss:

Edwin Forrest, being first duly sworn according to law, deposes and says:

That he is of counsel for the complainant in this cause and has had the active management thereof on behalf of said complainant; that prior to the institution of this suit he wrote to the defendant in relation to the matters herein involved, but never received any response to such letters, nor were the same returned to this affiant, though postage on the same was prepaid and his business address printed on the envelopes inclosing such correspondence; that, as appears by the record herein, the bill of complaint was filed on February 25th, 1899, but the marshal was not able to get service on the defendant until March 7th, though he was during such interval, as this affiant has been informed and believes, continuously in this city; that no appearance was entered until March 28th, and shortly after the entry of such appearance affiant wrote to the solicitor for the defendant concerning the same; that no answer having been filed by the ensuing rule day, the affiant, as solicitor for the complainant, procured from the court a decree *pro confesso* and reference to the examiner to take testimony; that the day subsequent to the procurement of such decree affiant saw the solicitor for the defend-

32      ant, apprised him of the fact, and on such solicitor asking this affiant not to take any further steps during the remainder of said week, during which time the defendant's solicitor said he would see his client about the matter, but that if affiant did not hear from the said solicitor during said time that then affiant could go ahead with the matter; that pursuant to such understanding affiant did nothing in the matter until the following week, when, not hearing further from the defendant's solicitor, affiant took the testimony of the complainant, and completed the complainant's testimony on last Monday, and since then the testimony has been filed.

Affiant further says that, as representing the complainant, there is no reason shown by the defendant in his application why said decree should be set aside, nor is any allegation made that the said defendant has any defense to the claim of the complainant.

EDWIN FORREST.

Subscribed and sworn to before me this 19th day of May, 1899.

J. R. YOUNG, *Cl'k*,  
By R. J. MEIGS, JR., *Ass't Cl'k*.

33

*Answer of Defendant.*

Filed May 22, 1899.

In the Supreme Court of the District of Columbia.

EDWARD P. RIORDAN }  
vs.                    }  
JOHN P. STOUT.      }  
                            Equity. No. 20202, Doc. 46.

For answer to so much of the bill of complaint in the above-entitled cause as defendant is advised is material and necessary to answer, defendant says:

1. Answering paragraph one of the said bill of complaint, defendant says that he admits the allegations therein contained to be true.

2. Answering paragraph two of the said bill of complaint, defendant says that he admits the allegations therein to be true.

3. Answering paragraph three of the said bill of complaint, defendant denies the same in the manner and form as therein set forth, and further answering, says that in or about the year 1892 defendant did invent a postage device known as the "Economic postage system," upon which letter-patent were granted your defendant in, to wit, the year 1893; that the only business transaction he had with the complainant in the year 1892 was as follows, and not otherwise:

That the defendant had purchased a lot of ground in the city of Superior, in the State of Wisconsin, for the sum of one hundred dollars, payable in monthly instalments of five dollars each; that

34      the defendant paid nine or perhaps ten of said instalments, and there remained due ten or perhaps eleven of said instalments, represented by notes signed by your defendant;

that your defendant then sold his interest in the said lot for the sum of thirty dollars to this complainant, and that your defendant avers that no other or further considerations entered into the said contract, and your defendant made no other or further agreement or agreements relating thereto; that at the time of the said sale, as hereinbefore set forth, no company existed for the promotion or putting into execution of your defendant's patent and device, and your defendant had no knowledge or means of knowing the number of shares in or the value per share of the stock of any then future company for the exploitation of the said patent and device, and that he made no promise of one thousand shares or of any shares whatsoever in any such company to the complainant herein.

4. Answering so much of the fourth paragraph of the said bill of complaint as defendant is advised is material and necessary for him to make answer to, defendant says that he denies the existence of any such contract as therein alluded to, and again avers that the contract was as set forth in paragraph three hereof, and further answering as to the money received from complainant, to wit, the sum of thirty dollars, the same was expended by your defendant, and he has no particular recollection as to the use to which it was applied, the same having become a part of defendant's general funds.

5. Answering paragraph five of the said bill of complaint, defendant denies the contract as therein referred to, and admits the other allegations of said paragraph.

35 6. Answering the sixth paragraph of the said bill of complaint, defendant says that he denies the making of the proposition, the acceptance thereof, and the entering into the contract, as therein set forth, and reaffirms the contract as herein set forth, and, further answering, admits the other allegations of the said paragraph.

7. Answering paragraph seven of the said bill of complaint, defendant denies the allegations of the same as therein contained, and, further answering, says that, as hereinbefore set forth, letters patent were issued to defendant on his said device, and that in, to wit, the year 1893, a company was formed to promote and exploit the same, known as "The United States Economic Postage Association," and your defendant became a stockholder in the same; that during, to wit, the year 1893, defendant met complainant and was informed by complainant that he, the complainant, was unemployed and that he was in need of money and was unable to realize on the lot of ground purchased from defendant, as above described, and that the land so purchased was a bad investment; whereupon the defendant, although in nowise obligated so to do, by reason of a feeling of friendship for the complainant, promised him, the complainant, to give him fifty shares of stock in the association above described; that he preferred to do so rather than that he, the complainant, should suffer a loss from any transaction with defendant; that complainant never asked for or demanded the fulfillment of said promise, but in March, 1896, the defendant, of his own will,

caused to be issued one hundred shares of stock in the above association in the name of complainant and delivered the same by mailing to the address of complainant; that the complainant has

never made any request or demand of this defendant for the 36 delivery of any stock, except that just previous to the filing

of this suit defendant received a letter from complainant's solicitors demanding nine hundred shares of stock in the above-mentioned company. Further, defendant says that the above-mentioned one hundred shares of stock was wholly in the nature of a gratuity and formed no part of the consideration of the contract herein set forth or of any contract with the complainant.

8. Answering paragraph eight of the said bill of complaint, defendant denies the performance of any obligation on the part of the complainant on any contract, saving and excepting as hereinbefore set forth, and denies his right to call upon this defendant for any other and further performance than as hereinbefore set forth, and denies in particular his right to require this defendant to deliver nine hundred shares on the stock of "The United States Economic Postage Association" to him, the complainant.

9. Answering paragraph nine of the said bill of complaint, defendant says that he is advised that the same is immaterial and that it is unnecessary for him to make specific answer thereto.

10, 11, 12, 13. Answering paragraphs ten, eleven, twelve, and thirteen, defendant says that he is advised that the foregoing paragraphs of this answer make full and complete denial of any right alleged on the part of the complainant hereto to any relief sought by the said bill of complaint, and that it is unnecessary for this defendant in answering the said paragraphs to make discovery of the condition of his assets in answer to the bill filed in this cause.

And now, having fully answered, defendant prays that he 37 may be hence dismissed with his proper costs.

JOHN P. STOUT.

Subscribed and sworn to before me this 22nd day of May, A. D. 1899.

[SEAL.]

F. EDWARD MITCHELL,  
*Notary Public, D. C.*

CHAS. H. TURNER,  
*Sol'r for Def't.*

*Order Setting Aside Decree pro Confesso.*

Filed May 23, 1899.

In the Supreme Court of the District of Columbia.

E. J. RIORDAN }  
vs. } In Eq. No. 20202.  
JOHN P. STOUT. }

Upon consideration of the motion of the defendant to set aside the decree *pro confesso* herein taken against him and grant him

leave to file an answer herein, it is, this 23d day of May, 1899, by the court ordered and decreed that said motion be, and the same is hereby, granted upon condition that the defendant pay the clerk's costs due to date.

CHAS. C. COLE,  
*Asso. Justice.*

38

*Replication.*

Filed Jun- 5, 1899.

In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN }  
vs.                    } In Equity. No. 20202.  
JOHN P. STOUT.      }

The complainant hereby joins issue with the defendant on his answer filed.

PADGETT AND FORREST,  
*Attorneys for Complainant.*

*Order for Withdrawal of Appearance.*

Filed Dec. 13, 1899.

In the Supreme Court of the District of Columbia, the 11th Day of December, 1899.

EDWARD J. RIORDAN }  
vs.                    } In Eq. No. 20202.  
JOHN B. STOUT.      }

The clerk of said court will please enter my appearance withdrawn as solicitor for defendant.

CHAS. H. TURNER,  
*Attorney for Defendant.*

39

*Order Requiring Defendant to Employ Counsel.*

Filed Dec. 13, 1899.

In the Supreme Court of the District of Columbia.

EDWARD G. RIORDAN }  
vs.                    } In Equity. No. 20202.  
JOHN P. STOUT.      }

It appearing to the court that the solicitor for the defendant has withdrawn of record as such solicitor, and that no one appears at present representing the said defendant, on motion of the complainant, it is this 13th day of December, 1899, by the court ordered that the said defendant, on or before the 23rd instant, employ new solic-

itors or solicitor, provided a copy of this order be served upon him on or before December 20th, 1899.

JOB BARNARD, *Justice.*

*Marshal's Return.*

Defendant not to be found Dec. 20, 1899.

AULICK PALMER, *Marshal.*  
B.

40 *Order Requiring Defendant to Employ Counsel.*

Filed Dec. 21, 1899.

In the Supreme Court of the District of Columbia.

EDWARD G. RIORDAN |  
vs. |  
JOHN P. STOUT. } In Equity. No. 20202.

It appearing to the court that the solicitor for the defendant has withdrawn of record in this cause as such solicitor, and that no one appears at present representing the said defendant, on motion of the complainant, by his solicitor, it is this 21st day of December, 1899, by the court ordered that said defendant, on or before Friday, January 5th, 1900, employ a new solicitor or solicitors herein, provided a copy of this order be served upon the defendant on or before January 2nd, 1900.

JOB BARNARD,  
*Associate Justice.*

*Marshal's Return.*

Served copy of within order on within-named defendant personally Jan'y 2, 1900.

AULICK PALMER, *Marshal.*  
B.

41 *Memorandum of Court's Opinion.*

Filed Mar. 30, 1900.

In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN, Complainant, |  
vs. |  
JOHN P. STOUT, Defendant. } No. 20202. Equity.

In this cause the complainant seeks to have the aid of the court to compel the specific performance of an alleged contract which was made, as averred, with the defendant in 1892, verbally, the contract being that, in consideration of the advancement to the defendant by the complainant of \$45 in cash and the assumption of \$50 unpaid

upon the purchase price of a lot in Superior, Wisconsin, the defendant sold the said lot to the complainant and conveyed it to him, and agreed to give the complainant 1,000 shares in a prospective company, which was at some future time to be organized, when some patent that was then applied for by the defendant had been granted, for the purpose of carrying out the object of said invention, namely, a scheme or plan for the placing of orders through the United States mail and postal service of the United States, the defendant claiming to have discovered some scheme or plan which was patentable.

The par value of the shares of stock which complainant alleges he was to receive is nowhere given in the terms of the contract; the time when the company was to be organized is nowhere given; there is nothing to show as to who was to organize the company or how it was to be organized or where.

42 The answer admits the making of a contract with the complainant in relation to a lot, and the defendant says that he was to give the complainant \$1,000.00 worth of stock, but not 1,000 shares, and that he did send him a certificate for 100 shares of the par value of \$10 each, in a company that was subsequently organized some three years ago, which the defendant has and which is shown by the testimony in this cause.

I am not satisfied from the evidence that the parties did reach a conclusion so definite as to amount to a complete contract, and especially a contract which a court of equity should be called upon to enforce, and I am therefore disposed to dismiss the bill with costs.

JOB BARNARD, *Justice.*

*Decree.*

Filed Mar. 30, 1900.

In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN }  
vs. } No. 20202. Equity.  
JOHN P. STOUT. }

This cause coming on for hearing on the pleadings and evidence and being heard and considered by the court, it is this 30th  
43 day of March, 1900, adjudged, ordered, and decreed that the complainant's bill be, and the same is hereby, dismissed with costs.

JOB BARNARD, *Justice.*

*Appeal.*

Supreme Court of the District of Columbia.

EDWARD J. RIORDAN }  
 vs.                    }  
 JOHN P. STOUT.      } Equity. # 20202.

APRIL 11, 1900.

And now comes the complainant and enters this his appeal to the Court of Appeals of the District of Columbia from the decree made herein on March 30, 1900, and the clerk is requested to enter this appeal and issue citation to the defendant.

PADGETT & FORREST,  
*For Complainant.*

Appeal, as ordered, entered by cl'k.

44        In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN }  
 vs.                    } No. 20202. In Equity.  
 JOHN P. STOUT.

The President of the United States to John P. Stout, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 11th day of April, 1900, wherein Edward J. Riordan is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court      Witness the Honorable Edward F. Birmingham, chief justice of the supreme court of the  
 of the District of      District of Columbia, this 11th day of April,  
 Columbia.                in the year of our Lord one thousand nine  
                               hundred (1900).

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this — day of —, 189—.

— — —,  
*Attorney for Appellee.*

[Endorsed:] 5704. No. 20202. Equity. Edward J. Riordan vs. John P. Stout. Citation. Issued April 11th, 1900. Being unable, after diligent search, to find Jno. P. Stout, the appellee, I have this day, at request of solicitor for complainant, served copy of the within citation on J. Walter Wheatley, solicitor of record for the appellee. April 23, 1900. Aulick Palmer, marshal. Padgett & Forrest, attorney- for appellant.

45 *Order Allowing Deposit of \$50 in Lieu of Bond on Appeal.*

Filed Apr. 21, 1900.

In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN  
 vs. } In Equity. No. 20202.  
 JOHN P. STOUT.

Upon motion of the complainant, it is by the court this 21st day of April, 1900, ordered that the complainant may deposit with the clerk of the supreme court of the District of Columbia, and in his office, in lieu of an appeal bond on complainant's appeal to the Court of Appeals of the District of Columbia, the sum of fifty dollars.

JOB BARNARD,  
*Associate Justice.*

*Memorandum.*

April 23, 1900.—\$50.00 deposited by appellant in lieu of appeal bond.

46 *Order for Transcript.*

Filed May 2, 1900.

In the Supreme Court of the District of Columbia.

EDWARD J. RIORDAN  
 vs. } In Eq. No. 20202.  
 JOHN P. STOUT.

To the clerk of the Supreme Court D. C.:

In making up the transcript in this cause, omit as part thereof Complainant's Exhibits E. J. R. Nos. 1 to 17, both inclusive.

PADGETT AND FORREST,  
*For Complainant.*

## 47 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss.  
 District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 46, inclusive, to be a true and correct transcript of the record, as per direction of counsel to clerk, copy of which is made part hereof, and as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 20202, equity, wherein Edward J. Riordan is complainant and John P. Stout is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court  
of the District of  
Columbia.

In testimony whereof I hereunto subscribe  
my name and affix the seal of said court, at  
the city of Washington, in said District, this  
10th day of May, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 993.  
Edward J. Riordan, appellant, vs. John P. Stout. Court of Appeals,  
District of Columbia. Filed May 21, 1900. Robert Willett, clerk.

